

Center for Medicaid and State Operations/Survey and Certification Group

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Ref: S&C-05-13

**DATE:** December 16, 2004

**TO:** State Survey Agency Directors

**FROM:** Director  
Survey and Certification Group

**SUBJECT:** Improving Enforcement via the Special Focus Facility Program for Nursing Homes

**Memorandum Summary**

We are strengthening enforcement of remedial action in cases of nursing homes that exhibit a persistent pattern of substandard care. Improvements to CMS' "Special Focus Facility" (SFF) Program include:

- **More Nursing Homes:** Increasing the total number of facilities by about 30%, with larger states doing more than smaller states (instead of 2 nursing homes in every state).
- **Better Selection:** Improving the data and methods by which substandard nursing homes are identified. Facilitating the ability of states to move on to other nursing homes on the candidate list if the original facilities show significant improvement.
- **Stronger Enforcement:** Implementing more robust enforcement for nursing homes that fail to make progress.
- **Reduced reporting burden:** Removing the monthly reporting requirement for states.

Current requirements for surveying each SFF twice a year remain unchanged.

**Background**

The Centers for Medicare & Medicaid Services (CMS) created the SFF program in 1998 as one of the initiatives of the Nursing Home Oversight and Improvement Program. The SFF program sought to decrease the number of persistently poorly performing nursing homes by focusing more attention on nursing homes with a record of poor survey performance. In January 1999, CMS directed state survey agencies (SAs) to conduct two standard surveys per year for each SFF instead of the one required by law. CMS also requested that states submit a monthly status report listing any surveys, revisits, or complaint investigations of SFF they had conducted in that month.

In this memorandum we convey revised methods that improve the selection of nursing homes for the SFF Program. We also strengthen enforcement of remedial action for those nursing homes that exhibit a persistent pattern of substandard care. The revisions will allow states to monitor facilities in need of more attention, impose sanctions on SFFs that fail to meet certain survey standards, and remove the monthly reporting requirement.

I very much appreciate the work of the state representatives who provided critiques of the current SFF program and specific ideas for improvement. Criticisms, and the corresponding CMS actions, are outlined below:

|    | Criticism  | Improvement  |
|----|--|--|
| 1. | <b>Limited number of facilities:</b> There have been too few nursing homes selected in the large states (2), and too many in very small states (2 out of 14 in one state). Hence, one small state ends up picking 14% of the state's nursing homes while another state picks 0.5%).                    | The number of SFFs selected in each state will now vary somewhat with the total number of nursing homes in the state. The national total number of facilities will increase by about 30%.  |
| 2. | <b>Selection Criteria:</b> One year's data on nursing home performance has been used in the past. States reported that the list of poorly performing nursing homes generated from one's year's worth of data did not match well with their knowledge of which nursing homes had the worst performance. | Three year's of data on each nursing home's performance will now be used.<br><br>States will pick from an expanded list.<br><br>Facilities that significantly improve may be removed from the list so the state may move on to other facilities on the candidate list. |
| 3. | <b>Enforcement:</b> Many facilities have remained on the SFF list for some time without improving.   | More robust enforcement will include:<br>(a) Required sanctions if significant progress does not occur;<br>(b) 18 months & 3 surveys without significant improvement will precipitate a notice of termination from Medicare/Medicaid.                                  |
| 4. | <b>Reporting:</b> It has been time-consuming for states to prepare the necessary reports for transmittal to CMS.   | Improvements to the ASPEN information system will enable CMS to extract the necessary information. States will no longer need to send the reports.   |

### **How the Special Focus Facility Program Will Be Changed**

**Number of Facilities:** The attachment to this memo identifies the number of SFFs that must be included in the program. The specified number of facilities will be selected by the state from the larger candidate list provided by CMS. We encourage states to select a larger number when possible. In the past, the minimum number of facilities was “2,” regardless of the total number of facilities in the state.

**Selection & Ability to Focus on Additional Facilities:** We will use three years of data to create the list of potential SFF in each state. States will be provided an expanded list of facilities from which to select. We are also revising the SFF requirements to allow states to remove names of nursing homes that have significantly improved survey results. This will free up resources for states to focus their efforts on nursing homes in need of closer monitoring. Nursing homes that are cited with deficiencies at a scope and severity no higher than “E” on two successive standard surveys without intervening complaint-related deficiencies of “F” or greater may be removed from the SFF program.

**More Robust Enforcement for Lack of Significant Progress:** Each enforcement authority, i.e., SA or regional office (RO), must impose an immediate sanction on a SFF that fails to achieve and maintain significant progress in correcting deficiencies on the first and each subsequent standard survey after a facility becomes a SFF. Each state must apply its appropriate discretion, in a manner consistent among all affected facilities, in determining significant progress. Decreases in the scope and severity of deficiencies or decreases in the number of deficiencies are both examples of such criteria. Complaint surveys may not be used to determine that a facility's performance has improved. However, the results of a complaint survey may be used as part of the enforcement process. This provision does not prevent the SA or RO from imposing an immediate sanction, even though substantial progress has occurred under this definition, if the sanction fits or is required under CMS policy.

Enforcement sanctions should be of increasing severity. They should include a Civil Money Penalty and/or a Denial of Payment for New Admissions. Each state or CMS should impose these sanctions with 15 days' notice. If, after 18 months and 3 surveys subsequent to being selected as a SFF, a nursing home fails to have made significant progress, a notice of termination from participation in Medicare and Medicaid will be issued. CMS will consider a facility's status and progress as a SFF in setting a reasonable assurance period before a home can reapply to participate in Medicare.

**Reduced Reporting Requirements:** SAs and ROs will no longer be required to submit a monthly status report on each SFF in their jurisdiction. CMS Central Office will monitor the program by evaluating data collected in ASPEN and submitted to the Central Office database. However, we ask that you still submit any changes to your list of SFFs that are selected from the candidate list that we supply.

**Effective Date:** The information contained in this memorandum clarifies current policy and must be implemented no later than 60 days after issuance of this memorandum.

**Training:** This clarification should be shared with all survey and certification staff, surveyors, their managers, and the state/RO training coordinator.

/s/  
Thomas E. Hamilton

cc: Survey and Certification Regional Office Management

Enclosure

# Number of Special Focus Facilities - Varied by Number of Nursing Homes in the State

| State                | # Nursing Homes | # Special Focus Facilities |
|----------------------|-----------------|----------------------------|
| Guam                 | 1               | 0                          |
| Virgin Islands       | 1               | 0                          |
| Puerto Rico          | 6               | 0                          |
| Alaska               | 14              | 0                          |
| 4 states/territories |                 |                            |
| District Of Columbia | 21              | 1                          |
| Wyoming              | 39              | 1                          |
| Delaware             | 42              | 1                          |
| Vermont              | 42              | 1                          |
| Nevada               | 43              | 1                          |
| Hawaii               | 45              | 1                          |
| Idaho                | 80              | 1                          |
| New Hampshire        | 81              | 1                          |
| New Mexico           | 82              | 1                          |
| North Dakota         | 83              | 1                          |
| Utah                 | 92              | 1                          |
| Rhode Island         | 95              | 1                          |
| 12 states            |                 | 12 facilities              |
| Montana              | 101             | 2                          |
| South Dakota         | 113             | 2                          |
| Maine                | 118             | 2                          |
| Arizona              | 134             | 2                          |
| West Virginia        | 138             | 2                          |
| Oregon               | 139             | 2                          |
| South Carolina       | 178             | 2                          |
| Mississippi          | 209             | 2                          |
| Colorado             | 216             | 2                          |
| Alabama              | 229             | 2                          |
| Nebraska             | 235             | 2                          |
| Maryland             | 240             | 2                          |
| Arkansas             | 245             | 2                          |
| Connecticut          | 248             | 2                          |
| 14 states            |                 | 28 facilities              |
| Washington           | 256             | 3                          |
| Virginia             | 287             | 3                          |
| Kentucky             | 296             | 3                          |
| Louisiana            | 318             | 3                          |

| State                 | # Nursing Homes | # Special Focus Facilities |
|-----------------------|-----------------|----------------------------|
| Tennessee             | 341             | 3                          |
| New Jersey            | 360             | 3                          |
| Georgia               | 365             | 3                          |
| Kansas                | 377             | 3                          |
| Oklahoma              | 378             | 3                          |
| 9 states              |                 | 27 facilities              |
| Wisconsin             | 410             | 4                          |
| Minnesota             | 421             | 4                          |
| North Carolina        | 422             | 4                          |
| Michigan              | 432             | 4                          |
| Massachusetts         | 481             | 4                          |
| Iowa                  | 490             | 4                          |
| Indiana               | 526             | 4                          |
| Missouri              | 550             | 4                          |
| 8 states              |                 | 32 facilities              |
| New York              | 669             | 5                          |
| Florida               | 696             | 5                          |
| Pennsylvania          | 732             | 5                          |
| Illinois              | 834             | 5                          |
| Ohio                  | 998             | 5                          |
| Texas                 | 1,172           | 5                          |
| 6 states              |                 | 30 facilities              |
| California            | 1,321           | 6                          |
| 56 states/territories |                 | Total 135 facilities       |

| # of Nursing Homes | # of Special Focus Facilities |
|--------------------|-------------------------------|
| 00-20              | 0                             |
| 21-100             | 1                             |
| 100-250            | 2                             |
| 201-400            | 3                             |
| 401-600            | 4                             |
| 601-1200           | 5                             |
| 1201+              | 6                             |
| Total              | 135                           |